

REMARKS

Claims 1-9 are currently pending in the application. Claims 4 and 9 have been cancelled. Pursuant to the following remarks, Applicant respectfully requests reconsideration of the application and its early allowance.

Objection of Claims 1 and 9

With respect to Claim 9, the Office objected to the claim as being a duplicate of Claim 4. Although Applicant traverses this ground of rejection as Claim 4 is directed to a container blank and Claim 9 is directed to a container, these claims have been cancelled thereby making their objection moot. Applicant respectfully requests removal of this ground of rejection.

Rejection of Claim 1 under 35 USC § 112, second paragraph

The Office rejected to Claim 1 for the wording of “said first side panel” and “said second side panel” which according to the Office, made the claims unclear. Applicant has amended these claims to correct this oversight. Applicant thanks the Office for bringing this issue to our attention. As such, Applicant respectfully requests removal of this ground of rejection.

Rejection of claims 1-3 and 5-8 under 35 USC § 102(b)

Claims 1-3 and 5-8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nolen US patent No. 3,145,902 (“Nolen”). The Office Action sets forth the position that Nolen teaches a “a pair of first side panels, second side panels, outer bottom panel 32, inner bottom panel 24, first and second divider panels 25, 35.” Applicant respectfully traverses this position of the Office.

As set forth in greater detail below, Applicant respectfully disagrees because Nolen fails to teach or suggest *every* element of Claim 1-3 and 5-8, as required under 35 U.S.C. § 102(b).

It is a well-settled axiom of patent law that in order to anticipate a Claim under 35 U.S.C. § 102, a reference must teach each and every element of the Claim. A Claim is anticipated only if each and every element, as set forth in the Claim, is found either expressly

or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

Thus, in order for a rejection to be proper under 35 U.S.C. § 102(b), the reference or references must teach each and every Claim element. Applicant respectfully notes that Nolen fails to teach every element of Claim 1.

Applicant respectfully submits that the Nolen fails to disclose a container blank that includes "... a lift cutout formed in said second side panel and said second divider panel," as set forth in Claim 1. Instead, Nolen provides no lift cutouts at all. The only cutouts provided in Nolen are horizontal slots 15, provided in the sidewall as handholds or for ventilation (FIG 1 and col. 1: 59-62). Nolen contains no disclosure at all regarding providing cutouts to allow for lifting such that "a lift cutout formed in said second side panel and said second divider panel." Conversely, the instant application provides that the "function of the lift cutouts 44 is to provide access for a lift fork (not shown) when the container 50 is employed without a support structure such as a pallet (not shown)." (pg. 3: 25-28)

Thus, Applicant notes that Nolen fails to disclose a container blank that includes "... a lift cutout formed in said second side panel and said second divider panel," as set forth in Claim 1. Accordingly, Applicant respectfully submits that Nolen fails to teach or suggest the embodiment of Claim 1 and therefore, the rejection of Claim 1 under 35 USC § 102 (b) is improper. Applicant respectfully requests removal of this ground of rejection.

With respect to Claim 2, 3, and 5, at a minimum, these Claims are dependent from Claim 1 and are therefore allowable for the same reasons that make Claim 1 allowable. As such, Applicant respectfully requests removal of this ground of rejection.

With respect to Claim 6, Applicant further notes that Nolen fails to disclose a container that includes "... a lift cutout formed in said second side panel and said second divider panel," as set forth in Claim 6. Accordingly, Applicant respectfully submits that Nolen fails to teach or suggest the embodiment of Claim 6 and therefore, the rejection of Claim 6 under 35 USC § 102 (b) is improper. Applicant respectfully requests removal of this ground of rejection.

With respect to Claim 7 and 8, at a minimum, these Claims are dependent from Claim 6 and are therefore allowable for the same reasons that make Claim 6 allowable. As such, Applicant respectfully requests removal of this ground of rejection.

Rejection of claims 1-3 and 5-8 under 35 USC § 102(b)

Claims 1-3 and 5-8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Brian US patent No. 4,574,996 (“Brian”), or Loudermilk, Jr. US patent No. 4,347,967 (“Loudermilk”), or Metzger US patent No. 2,785,844 (“Metzger”) . The Office Action sets forth the position that Brian, Loudermilk, or Metzger teaches the elements of the respective Claims. Applicant respectfully traverses this position of the Office.

As set forth in greater detail below, Applicant respectfully disagrees because Brian, Loudermilk, or Metzger fails to teach or suggest *every* element of Claim 1-3 and 5-8, as required under 35 U.S.C. § 102(b). In order for a rejection to be proper under 35 U.S.C. § 102(b), the reference or references must teach each and every Claim element. Applicant respectfully notes that Brian, Loudermilk, or Metzger fails to teach every element of Claim 1.

Applicant respectfully submits that the Brian, Loudermilk, or Metzger fails to disclose a container that includes “... a lift cutout formed in said second side panel and said second divider panel,” as set forth in Claim 1. Instead, Brian provides no lift cutouts at all. The only cutouts provided in Brian are handhold slots 80, provided in the sidewall as handholds (FIG 1 and col. 3: 25-28). Loudermilk does not provide any cutouts at all (all FIGS). Further, Metzger merely provides apertures 29 and 30, which are structurally very different from the present application. Once again, the instant application provides that the “function of the lift cutouts 44 is to provide access for a lift fork (not shown) when the container 50 is employed without a support structure such as a pallet (not shown).” (pg. 3: 25-28)

Thus, Applicant notes that the cited references fail to disclose a container blank that includes “... a lift cutout formed in said second side panel and said second divider panel,” as set forth in Claim 1. Accordingly, Applicant respectfully submits that Brian, Loudermilk, or Metzger each fail to teach or suggest the embodiment of Claim 1 and, therefore, the rejection of Claim 1 under 35 USC § 102 (b) is improper. Applicant respectfully requests removal of this ground of rejection.

With respect to Claim 2, 3, and 5, at a minimum, these Claims are dependent from Claim 1 and are therefore allowable for the same reasons that make Claim 1 allowable. As such, Applicant respectfully requests removal of this ground of rejection.

With respect to Claim 6, Applicant further notes that Brian, Loudermilk, or Metzger fail to disclose a container that includes "... a lift cutout formed in said second side panel and said second divider panel," as set forth in Claim 6. Accordingly, Applicant respectfully submits that Brian, Loudermilk, or Metzger each fail to teach or suggest the embodiment of Claim 6 and therefore, the rejection of Claim 6 under 35 USC § 102 (b) is improper. Applicant respectfully requests removal of this ground of rejection.

With respect to Claim 7 and 8, at a minimum, these Claims are dependent from Claim 6 and are therefore allowable for the same reasons that make Claim 6 allowable. As such, Applicant respectfully requests removal of this ground of rejection.

Rejection of claims 4 and 9 under 35 USC § 103(a)

The Office Action rejected Claims 4 and 9 as obvious with respect to Brian or Metzger in view of either Means et al. US patent No. 2,138,112 ("Means") or Jenkins et al US patent No. 345,510 ("Jenkins"). Applicant respectfully submits that Brian or Metzger, alone or in combination with the Means or Jenkins, fails to disclose, teach or even remotely suggest the present invention.

Claims 4 and 9 have been cancelled in this application. As such, this ground of rejection is now moot. However, it should be noted that none of the cited references teach any kind of lift cutout as required by the present application. As such, there is no combination of the cited references that teach each and every Claim element. Applicant kindly requests removal of this ground of rejection.

Rejection of claims 4 and 9 under 35 USC § 103(a)

The Office Action rejected Claim 6 as obvious with respect to Loudermilk in view of Wolf US patent No. 3,695,505 ("Wolf"). Applicant respectfully submits that Loudermilk, alone or in combination with Wolf fails to disclose, teach or even remotely suggest the present invention.

Claims 4 and 9 have been cancelled in this application. As such, this ground of rejection is now moot. However, it should be noted that none of the cited references teach any kind of lift cutout as required by the present application. As such, there is no

combination of the cited references that teach each and every Claim element. Applicant kindly requests removal of this ground of rejection.

Rejection of claims 3 and 8 under 35 USC § 103(a)

The Office Action rejected Claims 3 and 8 as obvious with respect to anyone of Nolen, Loudermilk, or Brian in view of Bruce US patent No. 3, 547,339 (“Bruce”). Applicant respectfully submits that Nolen, Loudermilk, or Brian, alone or in combination with Bruce fails to disclose, teach or even remotely suggest the present invention.

With respect to Claims 3 and 8, at a minimum, these Claims are dependent from Claims 1 and 6, respectfully, and are therefore allowable for the same reasons that make Claims 1 and 6 allowable. Further, it should be noted that none of the cited references teach any kind of lift cutout as required by the present application. As such, there is no combination of the cited references that teach each and every Claim element. As such, Applicant respectfully requests removal of this ground of rejection.

CONCLUSION

In summary, Applicant respectfully traverses the Office Action's rejections of Claims 1-9. Based upon the above remarks, Applicant respectfully requests reconsideration of the application and its early allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Beitey", with a stylized flourish extending from the end.

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